

AMENDED IN SENATE MAY 25, 2012

AMENDED IN SENATE MAY 14, 2012

AMENDED IN SENATE APRIL 9, 2012

## SENATE BILL

**No. 1180**

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### **Introduced by Senator Hancock**

February 22, 2012

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An act to amend Sections 1270, 1275, and 1318.1 of the Penal Code, relating to criminal procedure.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1180, as amended, Hancock. Criminal procedure: release on defendant's own recognizance.

(1) Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her own recognizance unless the court finds that the release will compromise public safety or will not reasonably ensure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.

This bill would ~~instead specify that~~ *authorize a court to determine*, in any case that is before a court upon an accusatory pleading concerning the commission of ~~either a misdemeanor or a felony punishable by imprisonment in a county jail, whether the defendant is entitled to~~ *may be released on his or her own recognizance, unless the court finds. In making this decision, the bill would require the court to determine whether the release will compromise public safety or will not reasonably ensure the appearance of the defendant. In regard to a defendant charged*

~~with a felony punishable in a county jail, the. The bill would require the court to specify whatever reasonable conditions the court finds appropriate to ensure the appearance of the defendant, and would require authorize the court to release the defendant on his or her own recognizance subject to those conditions. The bill would set forth certain conditions that the court may specify, including, but not limited to, prohibiting contact with alleged victims or potential witnesses, or home detention, with or without electronic monitoring. The bill would specify that, if release will compromise public safety or will not reasonably ensure the appearance of the defendant, then would require the court would be required to state the reasons for the finding and set bail, as specified.~~

(2) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

(3) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her

own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense, and would limit the use and availability of the information in the report. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

(4) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2     following:  
3     (a) Pretrial custody reform is urgently needed in California,  
4     where the pretrial population far exceeds the national average of  
5     61 percent. More than 71 percent of the 71,000 Californians held  
6     in county jails statewide on any given day are awaiting trial.  
7     (b) Pretrial custody reform will support the implementation of  
8     public safety realignment by providing counties greater flexibility  
9     in managing their pretrial populations using best practices  
10    developed over many years across many jurisdictions.  
11    (c) Pretrial services programs have been successfully  
12    implemented in many jurisdictions, and have helped to reduce the  
13    pretrial jail populations, save money, reduce recidivism, and protect  
14    the public.

1 (d) Increasing the use of evidence-based practices in pretrial  
2 population management programs will allow better empirical  
3 analysis in pretrial decisions, and will help to ensure that the court's  
4 decision to order release, conditions of release, and bail is based  
5 on a credible assessment of the defendant's risk to public safety  
6 and the likelihood of appearance as required.

7 (e) In order for pretrial programs to function properly and to  
8 protect the rights of persons submitting sensitive information, it  
9 is essential to treat pretrial investigation reports as confidential so  
10 the reports are used only for release, bail, and monitoring  
11 considerations.

12 SEC. 2. Section 1270 of the Penal Code is amended to read:

13 1270. (a) Any person who has been arrested for, or charged  
14 with, an offense other than a capital offense may be released on  
15 his or her own recognizance by a judge or magistrate who could  
16 release a defendant from custody upon the defendant giving bail,  
17 including a defendant arrested upon an out-of-county warrant. A  
18 defendant who is in custody and is arraigned on a complaint  
19 alleging an offense that is a misdemeanor ~~or a felony for which~~  
20 ~~the defendant is eligible to be sentenced pursuant to subdivision~~  
21 ~~(h) of Section 1170~~, and a defendant who appears before a judge  
22 or magistrate upon an out-of-county warrant arising out of a case  
23 involving only misdemeanors, shall be entitled to an own  
24 recognizance release unless the court makes a finding on the record,  
25 in accordance with Section 1275, that an own recognizance release  
26 will compromise public safety or will not reasonably ensure the  
27 appearance of the defendant as required. *Public safety shall be the*  
28 *primary consideration. If the court makes one of the findings*  
29 *authorized by this subdivision, the court shall then set bail and*  
30 *specify the conditions, if any, whereunder the defendant shall be*  
31 *released.*

32 (b) ~~In deciding~~ *The court shall determine* whether a defendant  
33 who is charged with a felony, the sentence for which may be served  
34 in a county jail pursuant to subdivision (h) of Section 1170, is  
35 eligible for release on his or her own recognizance *and to be*  
36 *ordered to appear, as required. Public safety shall be the primary*  
37 *consideration in this determination. In granting an own*  
38 *recognizance release*, a court may consider imposing any of the  
39 following conditions or any other reasonable condition that the

1 court deems appropriate *to ensure public safety and to ensure the*  
2 *defendant's appearance, as required:*

3 (1) Mandatory reporting to the court, a designated law  
4 enforcement agency, county probation department, or other local  
5 governmental agency.

6 (2) Prohibiting contact with alleged victims or potential  
7 witnesses who may testify concerning the offense.

8 (3) Restricting locations, places of abode, and travel.

9 (4) Specifying curfew.

10 (5) Restricting consumption of alcohol.

11 (6) Requiring restraint from any illegal use of a controlled  
12 substance, as defined in Division 10 (commencing with Section  
13 11000) of the Health and Safety Code.

14 (7) Home detention, with or without electronic monitoring.

15 (c) ~~In making the determination prescribed in subdivision (b),~~  
16 ~~public safety shall be the primary consideration.~~ If the court finds  
17 that the imposition of one or more of the conditions specified in  
18 subdivision (b), or any other reasonable condition the court deems  
19 appropriate, would reasonably ensure the defendant's appearance,  
20 as required, and the defendant's release would not compromise  
21 public safety, the court may specify the conditions that the court  
22 deems appropriate under which to release the defendant on his or  
23 her own recognizance.

24 (d) ~~This section shall apply whenever a case is before any court~~  
25 ~~upon an accusatory pleading concerning the commission of a~~  
26 ~~misdemeanor or a felony for which the defendant may be sentenced~~  
27 ~~to county jail pursuant to subdivision (h) of Section 1170.~~

28 (e)

29 (d) If the judge or magistrate makes a finding that release  
30 pursuant to subdivision ~~(a)~~ (b) will compromise public safety or  
31 will not reasonably ensure the appearance of the defendant, as  
32 required, the court shall state on the record the reasons for that  
33 finding and shall then set bail as is reasonably necessary to ensure  
34 the appearance of the defendant. A judge or magistrate may set  
35 bail in an amount less than what is specified in the county bail  
36 schedule, where he or she determines that the amount specified in  
37 the county bail schedule is higher than necessary to reasonably  
38 ensure the appearance of the defendant. In making this  
39 determination, the court may consider information included in a

1 pretrial services report, prepared in accordance with Section 1318.1,  
2 if one is available.

3 (f)

4 (e) Article 9 (commencing with Section 1318) shall apply to  
5 any person who is released pursuant to this section.

6 SEC. 3. Section 1275 of the Penal Code is amended to read:

7 1275. (a) In determining conditions for pretrial release, and  
8 in setting, reducing, or denying bail, the judge or magistrate shall,  
9 on the available information, take into consideration the protection  
10 of the public, the nature and circumstances of the offense charged,  
11 the history and characteristics of the defendant, the previous  
12 criminal record of the defendant, including whether the defendant  
13 was, at the time of arrest for the charged offense, on probation,  
14 parole, or other form of release pending trial, sentencing, or appeal,  
15 and the probability of his or her appearing at trial or hearing of the  
16 case, including the defendant's record of appearance at past court  
17 hearings or of flight to avoid arrest or prosecution. Public safety  
18 shall be the primary consideration.

19 (b) In considering the history and characteristics of the  
20 defendant, the judge or magistrate may consider any of the  
21 following:

22 (1) The ties of the defendant to the community, including his  
23 or her employment, the duration of his or her residence, and the  
24 defendant's family attachments.

25 (2) The defendant's current educational or vocational program  
26 enrollment and participation.

27 (3) The physical and mental condition of the defendant and the  
28 defendant's history related to dependence on alcohol or controlled  
29 substances, including past and current participation in substance  
30 abuse programs and counseling.

31 (c) In considering the nature and circumstances of the offense  
32 charged, the judge or magistrate shall include consideration of the  
33 seriousness of the offense, the alleged injury to the victim, alleged  
34 threats to the victim or a witness to the crime charged, and the  
35 alleged use of a firearm or other deadly weapon in the commission  
36 of the crime charged.

37 (d) In considering offenses wherein a violation of Chapter 6  
38 (commencing with Section 11350) of Division 10 of the Health  
39 and Safety Code is alleged, the judge or magistrate shall consider  
40 both of the following:

1 (1) The amounts of controlled substances alleged to be involved  
2 in the commission of the offense.

3 (2) Whether the defendant is currently released on bail for an  
4 alleged violation of Chapter 6 (commencing with Section 11350)  
5 of Division 10 of the Health and Safety Code.

6 (e) Before a court reduces bail below the amount established  
7 by the bail schedule approved for the county, in accordance with  
8 subdivisions (b) and (c) of Section 1269b, for a person charged  
9 with a serious felony, as defined in subdivision (c) of Section  
10 1192.7, or a violent felony, as defined in subdivision (c) of Section  
11 667.5, the court shall make a finding of unusual circumstances and  
12 shall set forth those facts on the record. For purposes of this  
13 subdivision, “unusual circumstances” shall not solely be based on  
14 the fact that the defendant has made all prior court appearances or  
15 has not committed any new offenses.

16 SEC. 4. Section 1318.1 of the Penal Code is amended to read:

17 1318.1. (a) A court, sheriff, county probation department, or  
18 other local governmental agency, with the concurrence of the board  
19 of supervisors, may employ an investigative staff for the purpose  
20 of recommending whether a defendant should be released on his  
21 or her own recognizance.

22 (b) Whenever a court, sheriff, county probation department, or  
23 other local governmental agency has employed an investigative  
24 staff pursuant to subdivision (a), before a court may order a  
25 defendant released on his or her own recognizance in any case  
26 involving a violent felony, as described in subdivision (c) of  
27 Section 667.5, or a felony in violation of subdivision (a) of Section  
28 23153 of the Vehicle Code, a pretrial investigation report shall be  
29 prepared recommending whether the defendant should be released  
30 on his or her own recognizance. The report shall include all of the  
31 following:

32 (1) Written verification of any outstanding warrants against the  
33 defendant.

34 (2) Written verification of any prior incidents where the  
35 defendant has failed to make a court appearance.

36 (3) Written verification of the criminal record of the defendant.

37 (4) Written verification of the residence of the defendant during  
38 the past year.

1 After the report is certified pursuant to this subdivision, it shall  
2 be submitted to the court for review, prior to a hearing held  
3 pursuant to Section 1319.

4 (c) Whenever a court, sheriff, county probation department, or  
5 other local governmental agency has employed an investigative  
6 staff pursuant to subdivision (a), a pretrial investigation report may  
7 be prepared in any case not involving a violent felony, as described  
8 in subdivision (c) of Section 667.5, or a felony in violation of  
9 subdivision (a) of Section 23153 of the Vehicle Code,  
10 recommending whether the defendant should be released on his  
11 or her own recognizance.

12 (d) Any report prepared pursuant to subdivision (b) or (c) shall  
13 include all of the results of an evidence-based pretrial risk  
14 assessment evaluating the defendant's probability of appearing at  
15 trial and potential risk to public safety. "Evidence-based pretrial  
16 risk assessment" is the objective, standardized analysis of  
17 information about a pretrial defendant in a way that is consistent  
18 with and guided by the best available scientific evidence and  
19 professional knowledge that measures the risk of the defendant's  
20 probability of appearing at trial and the potential risk to public  
21 safety while pending case disposition.

22 (e) In preparing the report pursuant to subdivision (b) or (c),  
23 the defendant shall not be interviewed about the facts and  
24 circumstances of the current offense, and any information that a  
25 defendant may provide shall not be included in the report. Any  
26 information provided by the defendant shall be used solely for the  
27 purposes of determining whether the defendant should be released  
28 on his or her own recognizance or in setting the conditions of the  
29 defendant's release or modifying a prior release order. The reports  
30 may be filed as part of the case record. The reports are confidential  
31 and shall be sealed upon receipt by the court and made available  
32 only by court order, except that the reports shall be made available  
33 upon request to any of the following:

34 (1) Any local or state criminal justice agency.  
35 (2) Any agency to which the defendant is referred for assessment  
36 or treatment.

37 (3) Counsel for the defendant who is the subject of the report.

38 (f) A court, sheriff, county probation department, or other local  
39 governmental agency may, with the concurrence of the board of  
40 supervisors, employ supervision staff to monitor the defendant's



- 1 compliance with the release conditions ordered by the court.  
2 Supervision staff may do any of the following:
- 3 (1) Notify the defendant of court appearance obligations.
  - 4 (2) Require the defendant to report periodically by mail,  
5 telephone, or personal appearance to verify compliance with release  
6 conditions.
  - 7 (3) Monitor and assist the defendant with complying with release  
8 conditions.
  - 9 (4) Supervise a defendant placed on home detention, with or  
10 without electronic monitoring, as a condition of release.
  - 11 (5) Promptly report violations of release conditions to the court.
  - 12 (6) Provide information to assist any law enforcement officer  
13 with detaining a defendant supervised pursuant to this section and  
14 for whom a bench warrant has been issued.
  - 15 (g) The salaries of the staff are a proper charge against the  
16 county.

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